

1 MICHAEL A. JACOBS (SBN 111664)
2 MJacobs@mofo.com
3 JOSEPH C. GRATZ (SBN 240676)
4 JGratz@mofo.com
5 TIFFANY CHEUNG (SBN 211497)
6 TCheung@mofo.com
7 MELODY E. WONG (SBN 341494)
8 MelodyWong@mofo.com
9 MORRISON & FOERSTER LLP
10 425 Market Street
11 San Francisco, California 94105-2482
12 Telephone: (415) 268-7000
13 Facsimile: (415) 268-7522

14 [CAPTION PAGE CONTINUED ON NEXT PAGE]

15 Attorneys for Defendants OPENAI, INC., a Delaware nonprofit
16 corporation, OPENAI, L.P., a Delaware limited partnership,
17 OPENAI OPCO, L.L.C., a Delaware limited liability company,
18 OPENAI GP, L.L.C., a Delaware limited liability company,
19 OPENAI STARTUP FUND GP I, L.L.C., a Delaware limited
20 liability company, OPENAI STARTUP FUND I, L.P., a
21 Delaware limited partnership, OPENAI STARTUP FUND
22 MANAGEMENT, LLC, a Delaware limited liability company

23
24
25
26
27
28
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

1 J. DOE 1 and J. DOE 2, individually and on
2 behalf of all others similarly situated,

3 Plaintiffs,

4 v.

5 GITHUB, INC., a Delaware corporation;
6 MICROSOFT CORPORATION, a Washington
7 corporation; OPENAI, INC., a Delaware
8 nonprofit corporation; OPENAI, L.P., a
9 Delaware limited partnership; OPENAI GP,
10 L.L.C., a Delaware limited liability company;
11 OPENAI STARTUP FUND GP I, L.L.C., a
12 Delaware limited liability company; OPENAI
13 STARTUP FUND I, L.P., a Delaware limited
14 partnership; OPENAI STARTUP FUND
15 MANAGEMENT, LLC, a Delaware limited
16 liability company,

17 Defendants.

18 Case No. 3:22-cv-07074-JST

19 Consolidated with Case No. 4:22-cv-
20 07074-JST

21
22
23
24
25
26
27
28
**DECLARATION OF ROSE S. LEE IN
SUPPORT OF ENTRY OF
DEFENDANTS' [PROPOSED]
ORDER RE: DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION**

1 Allyson R. Bennett (SBN 302090)
2 ABennett@mofo.com
3 ROSE S. LEE (SBN 294658)
4 RoseLee@mofo.com
5 Alexandra M. Ward (SBN 318042)
6 MORRISON & FOERSTER LLP
7 707 Wilshire Boulevard
8 Los Angeles, California 90017-3543
9 Telephone: (213) 892-5200
10 Facsimile: (213) 892-5454
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 I, Rose S. Lee, hereby declare:

2 1. I am an attorney at the law firm of Morrison & Foerster LLP, one of counsel of
3 record for Defendants OpenAI, Inc., OpenAI, L.P., OpenAI OpCo, L.L.C., OpenAI GP, L.L.C.,
4 OpenAI Startup Fund GP I, L.L.C., OpenAI Startup Fund I, L.P., and OpenAI Startup Fund
5 Management, LLC (“OpenAI”) in this action. I make this declaration in support of entry of
6 Defendants GitHub, Inc. (“GitHub”); Microsoft Corporation (“Microsoft”); and OpenAI’s
7 Proposed Order Re: Discovery of Electronically Stored Information. The statements in this
8 declaration are based on my personal knowledge and, if called and sworn as a witness, I could
9 and would competently testify thereto.

10 2. Attached as Exhibit 1 is a true and correct copy of Defendants’ [Proposed] Order
11 Re: Discovery of Electronically Stored Information (“Defendants’ Proposed ESI Order”).
12 Defendants’ Proposed ESI Order is based on the Northern District of California’s “[Model]
13 Stipulation & Order Re: Discovery of Electronically Stored Information for Patent Litigation”
14 (“Patent Model ESI Order”).

15 3. Attached as Exhibit 2 is a true and correct copy of a redline comparing
16 Defendants’ Proposed ESI Order with the Northern District of California’s Patent Model ESI
17 Order.

18 4. The caption was amended to include case-identifying information. Defendants
19 removed “Stipulation” and “for Patent Litigation” from the document title given that parties are
20 submitting competing proposals and that this is not a patent case.

21 5. In paragraph 2, Defendants removed the timing of jointly submitting modifications
22 within 30 days after the Federal Rules of Civil Procedure 16 Conference because the timing of
23 submitting ESI proposals was otherwise set by the Court during the September 15, 2023 Further
24 Case Management Conference (ECF No. 155).

25 6. In paragraph 6, Defendants added “or messaging service” to address the fact that
26 one or more of the parties uses messaging services in addition to traditional email.

27 7. Defendants removed paragraph 8 of the Patent Model ESI Order because it was
28 specific to patent cases (e.g., refers to patents, prior art, and accused instrumentalities).

1 8. Defendants added paragraph 9 to address enterprise messaging tools that are being
2 used by one or more of the parties in addition to traditional email.

3 9. As set forth in the parties' September 8, 2023 Joint Case Management Statement
4 (ECF No. 152 at 12-13), Plaintiffs and OpenAI dispute which OpenAI entities are actually
5 relevant to the case. In paragraph 10 of Defendants' Proposed ESI Order, OpenAI clarified that
6 the total of five custodians per producing party applies to all named OpenAI entities collectively,
7 not each named OpenAI entity. Treating each OpenAI entity separately would result in 35
8 OpenAI custodians, which would be overly burdensome and contrary to the spirit of the model
9 order's custodian limitation.

10 10. Defendants amended paragraph 11 to indicate the timing of identifying search
11 terms (i.e., that search terms per custodian per producing party shall be identified in email
12 production requests upon service).

13 11. Defendants added paragraph 13 of Defendants' Proposed ESI Order to specify
14 production format for ESI. Defendants and Plaintiffs agree that it is useful for the ESI Order to
15 provide some information about production format, although they disagree on substance of what
16 the Order should say. That said, after meeting and conferring with Plaintiffs, Defendants
17 incorporated Plaintiffs' request that PowerPoint presentations be produced in native format unless
18 redactions are required, as well as Plaintiffs' request that ESI items be processed so as to preserve
19 date/time shown in the document as it was last saved.

20 12. Defendants added paragraph 14 and Exhibit A to Defendants' Proposed ESI Order
21 to specify metadata fields to include with productions. Similar to paragraph 13, Defendants and
22 Plaintiffs agree that it is useful for the ESI Order to contain provisions regarding metadata,
23 although they disagree on what those provisions should say.

24 13. Defendants added paragraph 15 of Defendants' Proposed ESI Order to specify
25 timing, procedures, and formats for the parties' privilege logs. Defendants and Plaintiffs agree
26 that including provisions on privilege logs is appropriate, but disagree on what those provisions
27 should say.

1 14. After meeting and conferring with Plaintiffs, Defendants added paragraph 16 to
2 incorporate Plaintiffs' provision from their proposed ESI order regarding productions, ESI, or
3 other responses from non-parties in response to subpoenas.

4

5 I declare under penalty of perjury that the foregoing is true and correct to the best of my
6 knowledge.

7 Executed this 27th day of October, 2023 at San Jose, California

8

9

10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____

11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____

10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____

10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____

10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____

10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____

10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____

SIGNATURE ATTESTATION

Pursuant to Local Rule 5-1(h)(3), I attest under penalty of perjury that concurrence in the filing of this document has been obtained from any other signatory to this document.

Dated: October 27, 2023

By: /s/ Joseph R. Saveri
Joseph R. Saveri